

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.3000 OF 2006
IN
SUIT NO.429 OF 1988**

Lorna Timothy D'souza ..Plaintiff

V/s.

Andheri Om Niketan Co-operative ..Defendant
Housing Society Ltd.

Mr.Santosh Shetty i/b. [M.M.Vashi](#) for the plaintiff
Mr.Dhaval Kenia i/b. Law Charter for the defendant

CORAM : [S.A.BOBDE, J.](#)

DATE : 31ST JANUARY, 2007

P.C.

1. The plaintiff's suit was dismissed on 7th July, 2006 for non-appearance. The plaintiff has applied for restoration of the suit. In the affidavit dated 22th August, 2006, the plaintiff has stated that earlier, the matter was looked after by her deceased father. After her father died on 7th April, 2003, the matter was looked after by her brother with whom she later had some dispute. She

filed a suit against her brother. M/s.Bhandari & Bhandari, Advocate were appearing for the plaintiff in this suit. The said Advocate appeared for her brother in that suit filed by her. In this suit though, they were not discharged, when the matter came up for hearing on 7th July, 2006 they did not appear for her and as a result of which, the suit was dismissed. The defendant has not filed affidavit in reply. The plaintiff has stated that she learnt about the dismissal when she received a letter dated 29th June, 2006. After receiving the letter, she attended the Court. However, she was under the impression that the learned single Judge before whom she had appeared in Suit No.429 of 1988 was kept on 6th July, 2006. Later on, however, on making enquiry she learnt that instead of 6th July, 2006 when she attended the Court the matter was taken up on 7th July, 2006 by [D.G.Karnik](#), J. and who dismissed it for default.

2. There is no affidavit in opposition filed by

the defendant. Having regard to the uncontroverted allegations, in the circumstances of the case, I consider it appropriate in the interest of justice to set aside the impugned order, subject to payment of costs in the sum of Rs.5000/- to the defendants.

3. Notice of motion stands disposed of.

(S.A.BOBDE, J.)